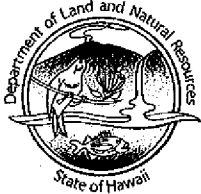


LINDA LINGLE  
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**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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June 29, 2010

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**Log # 2010.2409**

**Doc # 1006LT01**

Ms. Elizabeth Zelasko, Environmental Protection Specialist  
Federal Transit Administration  
Office of Planning and Environment  
East Building, 1200 New Jersey Avenue, SE  
Washington, DC 20590

Re: Section 106 (NHPA) Consultation  
Honolulu High-Capacity Transit Corridor Project  
Historic Effects, Programmatic Agreement and Mitigations  
Island of Oahu, TMK: (1) (various)

Dear Ms. Zelasko:

Thank you for coordinating the recent Section 106 consultation telephone conference call on the above referenced project ("Project"). As discussed, the FTA will be scheduling another conference call with the signatory and invited signatory parties in about a week to continue discussions.

During the June 23, 2010 telephone conference call, we primarily discussed the three concerns the State Historic Preservation Office continues to express regarding the draft Programmatic Agreement (dPA). I was asked to provide a letter describing those continuing concerns and the suggested options to resolve them, which have also been under discussion in the consultation, to facilitate further discussion and resolution.

**I. SHPD Remaining Topics of Concern to be Resolved in the PA**

**A. The dPA needs to specify a process, timetable, and the various parties' responsibilities for post-review archaeological discoveries.**

Section III of the dPA provides for a very detailed process, timetable and responsibilities for consultation, fieldwork, treatment plans, mitigation plans and

curation in the event burials and artifacts are discovered during the pre-construction period of each of the four phases of the project.<sup>1</sup>

In stark contrast, Section XI of the dPA states that post-review discoveries of burials is not anticipated, then merely recites existing state law without defining procedures, timetables and responsibilities specific to this Project.

This section of the dPA must be amended. As stated in the call, post-review discoveries should be anticipated. Recent redevelopment projects in Honolulu's urban core have generated numerous post-review discoveries despite exhaustive pre-review surveys. Lack of a specified process, timetable, and commitments to responsibilities for such discoveries will generate much confusion, possibly result in inappropriate treatment of burials, and leave this Project vulnerable to litigation. It is in the best interest of all parties to provide a reasonable post-review discovery consultation process, timetable and defined responsibilities, similar to that outlined in Section III.

Reinterment, if such is deemed appropriate, should be done in a prompt manner and not wait until the end of the project.

**B. The Project requires SHPO review well above and beyond the norm and thereby the City must provide staff expertise and continuity to meet the reviews generated by the Project and in this PA.**

The ACHP representatives on the call verified that similar agreements have been generated in other large-scale projects. Two examples have now been distributed to the parties. We encourage further discussion on amending the dPA to include the following:

- Define the professional expertise and qualifications needed for the Project reviews and mitigation provisions in the PA;
- Define the funding responsibility for these positions;
- Define oversight of the positions;
- Define the responsibility of the SHPO and of the City.

**C. The adverse effects upon the two Historic Districts generated by the Project require special mitigation tailored to preserve the unique characteristics of entire districts**

Given the discussion on our call, I've provided a detailed outline of the SHPD concerns, below.

**II. The Draft Programmatic Agreement Does Not Adequately Address the Direct, Indirect, Reasonably Foreseeable and Cumulative Adverse Effects on the Chinatown Historic District and the Merchant Street Historic District Caused by the Project**

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<sup>1</sup> However, as noted in the call, it is important to modify this section to specify that the City is responsible for reinterment, if removal is deemed appropriate during consultation, and that reinterment should be done in a prompt manner and not wait until the completion of the project.

All parties have agreed that the Project will have an adverse effect on the Chinatown Historic District and the Merchant Street Historic District. The dPA defines direct and indirect adverse effects as follows:

“...when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for the inclusion in the National Register of Historic Places...”

When it comes to historic districts, the characteristics that qualify the “property” – which is actually an entire community – for listing on the Register are broad, community-wide characteristics including the area’s connection to adjacent spaces.

“Throughout the whole of its 180 years as a trading center in the Pacific, Honolulu has always been closely identified with its harbor – the principal channel of contact with the outside world. It is, however, that portion of Honolulu immediately adjacent to the harbor at the mouth of Nu’uanu Stream which holds the longest continuous history of native and immigrant settlement and where the story of Hawai’i’s common folk has been most compactly unfolded.”

*Statement of Significance for the nomination of Chinatown Historic District on the National Register of Historic Places. The District has been listed on the Register since 1973.*

The dPA acknowledges that reasonable anticipated and cumulative effects that result in the future must also be addressed:

“Adverse effects may include reasonable foreseeable effects caused by the Project that may occur later in time, be farther removed in the distance, or be cumulative...”

**A. Examples of Direct, Indirect, Reasonable Foreseeable and Cumulative Adverse Impacts on the Historic Districts**

The direct, indirect, reasonable foreseeable and cumulative impacts on the two Historic Districts will include, among other:

1. Development of a high-capacity rail corridor and transit stops which alter the characteristics of the low-density historic properties;
2. Development of a transit corridor which slices apart a historic district, segregating the waterfront community from the upper portions of the community;
3. Development of transit facilities which will provide additional shelter to a large homeless population (given new City laws to remove homeless from parks, we are already seeing an increase of homeless concentrations in urban areas);
4. Development of transit structures which will be targets for graffiti, areas for drug dealing and drinking – existing problems in Chinatown and Merchant Street which will be exacerbated by large public transit facilities - as has occurred in other cities); and
5. Development of transit stops with high volume of daily commuter traffic, creating tremendous new markets for commerce, resulting in increasing pressure to redevelop the two Historic Districts to a higher density.

Outlined below are the specific dPA provisions SHPD recommends strengthening to address the impacts on the Historic Districts.

**B. Section IV Design Standards Should be Amended to Provide Distinct Standards and Procedures for the Two Historic Districts**

The dPA provides three commitments relating to design standards:

1. In the event the Secretary of the Interior's Standards for the Treatment of Historic Properties cannot be applied, the City shall consult with signatories to develop a treatment plan to minimize and mitigate adverse effects to historic properties.
2. The City shall conduct two neighborhood design workshops for all transit stations and shall consider comments received.
3. The City shall provide consulting parties with preliminary engineering design plans and plans during the final design stage for all structures adjacent to historic properties; provide 30 days for comments; and shall consider comments.

Item one is already required by law and is not an additional mitigation. Items two and three do not distinguish the tremendous difference, including the public interest and complexity of review, between an individual historic property and the level of design necessary to conform to the character of an entire historic district.

Suggested amendments to further discussion may include:

- Specify that the design standards for the transit facilities including stations within the Historic Districts shall conform to the existing zoning and design criteria for these Districts, with specific exceptions enumerated by the City. We recognize that the City will likely require some exceptions due to height restrictions and the like, and therefore can provide for specified exemptions in the PA.
- Require the two neighborhood design workshops for the transit facilities within the two Historic Districts to include architectural renderings of proposed design shown in two or more view planes of the Districts.
- Provide the consulting parties with 90 days for review and comment on the preliminary and final plans for the transit facilities within the two Historic Districts.

**C. Section VIII Mitigation for Specific Historic Properties Should be Amended to Include the Two Historic Districts**

This section only addresses four specific historic properties: lava curbstones; Kapalama Canal Bridge; true kamani trees; and historic parks. It does not address the two Historic Districts, which unarguably warrant specific mitigation.

Suggested amendments to further discussion may include:

- City dedication of a separate fund for each of the two Historic Districts for exterior improvements to listed or eligible historic properties. The funds may be governed by the same structure the City uses for the general APE grants.

- City dedication of fund specifically for exterior improvements to historic structures within the Historic Districts.
- City update the Chinatown Historic District National Register nomination.
- City create a Main Street Program for the Historic Districts (may also include the Special Design Districts along the route, including the Capitol District and Kaka'ako).

**D. Section IX Measures to Address Reasonably Foreseeable Indirect and Cumulative Effects Caused by the Project**

The dPA provides three commitments relating to reasonably foreseeable indirect and cumulative effects:

1. The City shall hire a qualified Project Architect Historian.
2. The City establishes a \$2 million grant fund and governance structure to support exterior improvements to any eligible or listed historic property within the entire Project APE.
3. The City shall establish a baseline annual average number of demolition permits; monitor the number of demolitions of listed and eligible historic properties within the APE during construction, and notify consulting parties if demolitions of historic structures increase beyond one standard deviation.

Item one does not provide any specific effort to address foreseeable or cumulative impacts. Moreover, as discussed earlier, a project of this magnitude necessitates the City supporting a broader number of qualified staff to conduct the tremendous volume of professional reviews generated by the Project.

The grant fund in item two is open to the entire APE of the Project, and thereby could end up not supporting *any* exterior improvements to the two Historic Districts. Furthermore, given construction costs in Hawaii, the complexity of renovating exteriors of historic structures, the fund is inadequate to support much renovation.

Item three merely quantifies one of the cumulative impacts and does nothing to mitigate them.

Suggested amendments to address foreseeable indirect effects may include:

- City dedication of increased and sustained services to prevent, reduce or remove the foreseeable impacts of homeless, drugs, graffiti, and trash created by large volumes of commuter traffic.
- City dedication of funds to support existing community partnerships dedicated to reduce negative impacts on the district.
- Exterior improvement funds noted earlier.

**E. Redevelopment and Pressure for Higher Density Redevelopment with the Historic Districts is a Reasonable Foreseeable and Cumulative Impact that Requires Mitigation**

The City and County high-capacity public transportation rail system is the single largest public works project in the history of Hawaii and will have the indirect and cumulative effect of literally reshaping entire communities.

“I’ve said this many times in the last few years: while transit is important, even more important to improving our quality of life is smart development around the stations. With rail, we have an immense opportunity to reshape our communities for the better, and all of us should embrace its potential, guiding it to meet the goals and aspirations of each community. It can provide more housing, including affordable housing. It can provide more parks and open space. It can create wonderful community meeting places, and better circulation.”

*Mayor Mufi Hanneman, City and County of Honolulu, April 5, 2010.*

The Project will indirectly and cumulatively trigger renovations, redevelopment and new development within the entire APE. While the discussion of how that broader redevelopment takes place is not a topic for this consultation, the effects on the two Historic Districts is certainly one that must be addressed by the signatory parties to this agreement.

“Chinatown is the oldest section of downtown Honolulu. In addition to its historic role in the growth of the city, and its architectural significance as reflected in its placement on the National Register of Historic Places, it reflects a dynamic ethnic population and business community. ... While government programs, including urban renewal and tax incentives for renovation of older buildings, have been introduced to address [physical, social and economic] problems, there is still a concern that architectural and historic elements of the district may still be lost. *Further, Chinatown’s location adjacent to the central business district continues to produce pressures to redevelop the area to a higher density. Therefore, it is necessary to preserve the historic significance and architectural characteristics of Chinatown, and to ensure the compatibility of new development within this context.* The perpetuation of architectural character dominant during the 1880s to the 1940s is particularly important.”

*Section 21-9.60-1, Land Use Ordinance, City and County of Honolulu.*

The Project will indirectly and cumulatively trigger increased pressure to redevelop the two Historic Districts to a higher density. Both Historic Districts are directly located within the main business district of Honolulu and will serve as primary transit stops for this high-capacity rail. The Project will deliver increased volumes of daily foot traffic, consisting of employed persons with income and consumer needs. Both areas currently consist of numerous small businesses in small buildings. There is no question that pressure for higher density development will increase due to the placement of transit stops in or near these communities.

When it comes to Historic Districts, the characteristics that qualify these entire communities for inclusion on the Register are district-wide characteristics including the architecture of buildings, the scale of development, the materials, the surrounding uses and public areas, view plains, and many other comprehensive, community-scaled

characteristics of the cumulative properties that make up the district. Significant changes to the density of these two Historic Districts will directly alter the very characteristics that qualified them for the Register. Accordingly, the indirect and cumulative impact of redevelopment within the Historic Districts is a topic for this consultation.

The dPA does not address the indirect and cumulative impact of redevelopment. However, the dPA implies that redevelopment will be required to take into consideration impacts on historic districts and will have established controls to protect the character of historic properties.<sup>2</sup>

That assurance of protection is not accurate. The referenced transit-oriented development ordinance actually authorizes overriding the existing ordinances that protect and maintain the characteristics of the two Historic Districts.

"The regulations applicable to a TOD Zone shall be in addition to underlying zoning district and, if applicable, special district, regulations, and may supplement and modify the underlying regulations... If any regulation pertaining to a TOD Zone conflicts with any underlying zoning district or special district regulation, the regulation applicable to the TOD Zone shall take precedence..."

If any regulation to the special districts conflicts with any provision contained within Article 3, the more restrictive shall take precedence; provided, however, that this section shall not apply to TOD Development Regulations...which shall take precedence in the event of a conflict with any underlying Article 3 provision or special district regulation."

*Ordinance 09-4, Relating to Transit Oriented Development,  
Sections 21-9-100; 21-9.20-6, City and County of Honolulu*

The TOD ordinance altered the standard of protection within special districts (which include the two Historic Districts). Formerly, the standard was in case of any conflict between the special district regulation and any other regulation, the stricter applied. The TOD ordinance now provides that the TOD regulations shall override the special district provisions even if the TOD regulations are less strict.

TOD Zones generally include all parcels of land where any portion of the parcel is within 2,000 feet of a transit station. *Ordinance 09-4, Section 21-9.100(c)*. Accordingly, all properties within a circle of almost a mile around the transit stations in the Historic Districts may no longer be subject to any special district zoning protections and have no limits on the density or character of redevelopment.

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<sup>2</sup> "WHEREAS, the City has implemented zoning "overlay districts" to preserve individual and groupings of historic and cultural resources, through the application of architectural and other design guidelines and standards for developments surrounding them; and such overlay districts are already established for Chinatown, Merchant Street, and the Hawaii Capital (civil center) areas; and

WHEREAS, Ordinance 09-04 requires the establishment of transit-oriented development (TOD) overlay zoning districts around every transit station, and this ordinance requires the identification of important historic and cultural landmarks in the area, the establishment of controls to protect and enhance these resources, and encouraging adjacent development to reflect the cultural and historic context of the station area..."

The SHPO agrees that redevelopment can be a blessing within any historic district, provided it is done in a manner that retains the very characteristics that qualified the entire community to be listed on the Register. The PA must include measures that ensure the two Historic Districts retain their characteristics while undergoing inevitable redevelopment generated by this Project.

## **Conclusion**

Thank you for coordinating the next conference call among the signatory parties. I understand the FTA will be working with the City to provide some response to the concerns identified by our office.

I also understand that our future call(s) will also cover remaining concerns of the National Park Service, which they were not prepared or able to address due to time constraints at our June 23 call.

Sincerely,



Laura H. Thielen